

Before Hon'ble S. S. Sodhi, J.

CHARAN DAS,—*Petitioner.*

versus

SURINDER KUMAR AND OTHERS,—*Respondents.*

Election Petition No. 5 of 1991

May 13, 1992.

Representation of Peoples Act 1955—Ss. 80, 81 and 83—Cause of action—Disclosure of—Material Facts—Vague and General Allegations—No cause of action disclosed.

Held, that what stands out so prominently on a reading of the petition, are the vague and general allegations made of votes cast in favour of the petitioner first being included in the votes of the returned candidate and when objection is raised thereto, such votes being declared invalid. Admittedly, no record or notes of any such rejected votes was ever kept. Further and more important is the complete absence of any averment of any wrong-doing at the stage of scrutiny of disputed ballot papers by the returning officer. There is no mention of any denial of opportunity to the candidates or their agents to examine the votes at least at that stage. Over and above all this, there is no averment to the effect that the result of the election had been materially affected by the alleged irregularities. There can be no escape from the conclusion that the petition discloses no cause of action.

(Paras 27 & 28)

Ranjan Lakhanpal, Advocate, *for the Petitioner.*

S. C. Kapoor, Sr. Advocate with M/s Rakesh Nagpal, Advocate and Asish Kapoor, Advocate, *for the Respondents.*

JUDGMENT

S. S. Sodhi, J.

(1) The challenge here is to the election of Surinder Kumar to the Vidhan Sabha Haryana from the Kaithal Assembly Constituency on the ground of irregularities committed during the counting of votes. The setting aside of the election and recount of votes thus being the relief sought.

(2) It was by a margin of 437 votes that the successful candidate **Surinder Kumar** defeated his nearest rival—the petitioner **Charan Dass**. 17,190 being the votes secured by Surinder Kumar as against 16,735 of the petitioner.

(3) There is an undoubted power vested in the Court to order recount of votes. When such power can or should be exercised is now well-settled by judicial precedents noticed and discussed in the recent judgment of this Court in Election Petition 3 of 1991 (*Jagjit Singh v. Dharam Pal Singh and others*) decided on January 21, 1992. As held, there, the essential prerequisite is a concise statement of material facts on which the petitioner relies. To quote the relevant portion of this judgment, "As observed by the Supreme Court in *Dr. Jagjit Singh v. Giani Kartar Singh and others* (1) "vague or general allegations that valid votes were improperly rejected or invalid votes were improperly rejected or invalid votes were improperly accepted, would not serve the purpose which S. 83(1) (a) has in mind. An application made for the inspection of ballot boxes must give material fact which would enable the Tribunal to consider whether in the interest of justice, the ballot boxes should be inspected or not. In dealing with this question, the importance of the secrecy of the ballot papers cannot be ignored and it is always to be borne in mind that the statutory rules framed under the Act are intended to provide adequate safeguard for the examination of the validity or **invalidity of votes and for their proper counting.** It may be that in some cases, the ends of justice would make it necessary for the Tribunal to allow a party to inspect the ballot boxes and consider his objections about the improper acceptance or improper rejection of votes tendered by voters at any given election; but in considering the requirements of justice, care must be taken to see that election petitioners do not get a chance to make a roving or fishing enquiry in the ballot boxes so as to justify their claim that the returned candidate's election is void....."

(4) Further, it was emphasised that according to the scheme of the relevant rules prescribed in Part-V of the Conduct of Election Rules, 1961. "— a defeated candidate, has ample opportunity to examine the voting papers before they are counted, and in case the objections raised by him or his election agent have been improperly overruled, he knows precisely the nature of the objections raised by him and the voting papers to which those objections related. It is in the light of this background that S. 83(1) of the Act has to be applied to the petitions made for inspection of ballot boxes. Such an application must contain a concise statement of the material facts."

(5) The Court also went on to draw pointed attention to the safeguards which have been prescribed in Part-V of the Conduct of

(1) A.I.R. 1966 S.C. 713.

Election Rules, 1961, the broad features of which were indicated thus, “— Under R. 53 candidates, their election agents or counting agents are admitted to the place fixed for counting of votes. Rule-54 emphasises the importance of the maintenance of secrecy of voting. Rule 55 deals with the scrutiny and opening of ballot boxes, before a ballot box is opened at a counting table, the counting agents present at that table shall be allowed to inspect the paper seal or such other seal as might have been affixed thereon and to satisfy themselves that it is intact. The Returning Officer has himself to take care to see that no ballot box has been tampered with. In case any tampering of **the ballot boxes is disclosed**, the Returning Officer has to take action under R. 58. Rule-56 provides for the scrutiny and rejection of ballot papers. R. 56(1) lays down that the ballot papers taken out of each ballot box shall be arranged in convenient bundles and scrutinized. Then objections are raised as specified by sub-rule (2) and are dealt with in accordance with the provisions of other sub-clauses of R. 56(2). It is thus clear that the scheme of R. 56 is that every ballot paper can be examined by the counting agent and objections can be raised in respect of it if the election agent feels that a valid objection can be raised. It is after these objections are examined and dealt with according to R. 56 that the stage of counting votes arrives. Even after the completion of the counting, it is open to a candidate or his election agent to apply in writing to the Returning Officer for a recount of all or any of the ballot papers already counted stating the grounds on which he demands such recount. That is the effect of R. 63(2). After all this procedure has been gone through, the Returning Officer completes the result-sheet in Form-20, and signs it. Once this is done, no application for a recount shall be entertained.

(7) **Earlier too**, the Supreme Court had expressed a similar view in *Ram Sewak Yadav v. Hussain Kamil Kidwai and others* (2), there, it was observed, “— — — at every stage in the process of scrutiny and counting of votes the candidate or his agents have an opportunity of remaining present at the counting of votes, watching the proceedings of the returning Officer, inspecting any rejected votes, and to demand a recount. Therefore, a candidate who seeks to challenge an election on the ground that there has been improper reception, refusal or rejection of votes at the time of counting, has ample opportunity of acquainting himself with the manner in which the ballot boxes were scrutinized and opened and the votes were counted. He has also opportunity of inspecting rejected ballot papers and of demanding a recount. It is in the light of the provisions of S. 83(1)

(2) A.I.R. 1964 S.C. 1249.

which requires concise statement of material facts on which the petitioner relies and to the opportunity which a defeated candidate had at the time of counting of watching and of claiming a recount that the application for inspection must be considered."

(8) Further, referring to the power to order inspection and recount of votes, it was held, "An order for inspection may not be granted as a matter of course; having regard to the insistence upon the secrecy of the ballot papers, the Court would be justified in granting **an order for the inspection** provided two conditions are fulfilled:—

- (i) **that the petition for setting aside an objection contains an adequate statement of the material facts on which the petitioner relies in support of his case and ,**
- (ii) the Tribunal is *prima facie* satisfied that in order to decide the dispute and to do complete justice between the parties inspection of the ballot papers is necessary.

(9) But an order for inspection of ballot papers cannot be granted to support vague pleas made in the petition, not supported by material facts or to fish out evidence to support such pleas. The case of the petitioner must be set out with precision supported by averments of material facts. To establish a case so pleaded an order for inspection may undoubtedly, if the interests of justice require, be granted. But a mere allegation that the petitioner suspects or believes that there has been an **improper reception**, refusal or rejection of votes will not be sufficient to support an order for inspection."

(10) Moving with the passage of time, we turn next to *Chanda Singh v. Chaudhary Shiv Ram Verma and others* (3), where, while reaffirming the legal position regarding an order for inspection and recount of votes, Krishna Iyer, J. expressed the apprehension, "— — If the counting of the ballots are interfered with by too frequent and flippant recounts by courts a new threat to the certainty of the poll system is introduced through the judicial instrument. Moreover, the secrecy of the ballot which is sacrosanct becomes exposed to deleterious prying if recount of votes is made easy. The general reaction, if there is judicial relaxation on this issue, may well be a fresh pressure on luckless candidates, particularly when the winning margin is only of a few hundred votes as

here, to ask for a recount Micawberishly looking for numerical good fortune or windfall of chance discovery of illegal rejection or reception of ballots. This may trend to a dangerous disorientation which invades the democratic order by injecting widespread scope for reopening of declared returns, unless the Court restricts recourse to recount to cases of genuine apprehension of miscount or illegality or other compulsions of justice necessitating such a drastic step.
— — —”

(11) It is in this light that the issue raised has to be considered and adjudicated upon.

(12) At the very out-set, a preliminary objection was raised by the returned candidate to the effect that the averments made in the petition were vague and lacked material facts and did not disclose any cause of action. A plea was also raised that the election petition had not been properly verified. Accordingly, two preliminary issues were framed. These being :—

- (1) Whether the petition does not disclose any cause of action and that the averments made in paragraphs 5 to 9 and 16 and 17 of the petition lack material facts. If so, to what **effect ?**
- (2) Whether the Election Petition has been properly verified. If not, to what effect ?

The issues regarding the verification of the petition was not pressed. The issue contested was thus only with regard to whether or not the petition disclosed a cause of action ?

(13) The case, as set up by the petitioner is that the counting tables were located in a barbed wire enclosure with the counting agents **of the candidates being 7 to 10 feet away from the counting tables** and it was, therefore, not possible for the counting agents to supervise the counting.

(14) It is pertinent to note here that the arrangements during counting were admittedly the same for the counting agents of all the contesting parties and there is no mention of any protest or objection being raised by any of the candidates or their agents about it. This ground cannot, by itself, therefore, provide any occasion for a recount of votes.

Turning to specifics, the instance quoted regarding table No. 1 was that Amar Nath, the counting agent of an Independent

Candidate—Kanwar Bhan, noticed some votes of the petitioner in the bundles of respondent—Surinder Kumar. When he objected to this, the counting supervisor took these votes of Surinder Kumar and declared them invalid and these were then rejected. It was said that there was a clear mark on the ballot paper in favour of the petitioner, with only also a slight ink mark on the symbol of respondent Surinder Kumar.

(15) A reading of these allegations, on the face of it, show that they are vague and lacking in material particulars. No number of such votes has been mentioned nor indeed the serial number of any of such rejected votes.

(16) **Similar allegations** find mention with regard to the counting at Table-2. It was said that often the votes of the petitioner and other candidates were found in the bundle of respondent—Surinder Kumar and when on persistent demands, the bundles of this respondent were checked, the votes of the petitioner and other candidates were taken out and declared invalid. It was further said, in this behalf, that the counting agents were unable to note down the exact number of such votes as they were not allowed to carry any writing material with them.

(17) Here too, it would be seen that the particulars, as set-forth in the petition are patently lacking in material particulars. Neither the number of such votes find mention nor the ballot number thereof. It is also pertinent to note that there is no mention in the petition of any objection having been raised by any Candidate or his agent at any time during counting to corroborate the plea that they were not allowed to carry, and writing, material into the counting hall and were thus unable to note down the particulars of such votes. At any rate, this allegation cannot stand scrutiny when regard is had to the applications annexures P/2 and P/3, which are said to have been submitted to the Returning Officer during counting on the same day. These could obviously not have been submitted by the candidates and their agents had been denied writing material and paper.

(18) One aspect of the matter, which is of material significance and is relevant, not only in dealing with the allegations referred to earlier, but also which are presently to be adverted to, is that as per the procedure for counting, rejection of votes took place, other than at the counting table. This was done either by the Returning Officer or by the Assistant Returning Officer and it is there that he is supposed to have sitting with him the agents of the candidates, who are provided the opportunity of examining the disputed ballot papers.

There is no averment to the effect that such opportunity in respect of any of the questioned or rejected ballot papers was ever denied or that the candidates or their agents were unable to note down the particulars of such ballot papers.

(19) Reverting to the allegations of irregularities during counting, reference was made to the happenings at counting table-3. Here again, it is said that some votes of the petitioner were included in the bundle of Surinder Kumar and that when this was pointed out, such votes of the petitioner were declared invalid on the ground that though the mark was on the name of the petitioner, there was also slight ink mark against the name of the respondent. Again, no particulars of such ballot papers are forthcoming.

(20) Further, it was averred that counting continued smoothly upto 4th round, but when thereafter results started pouring-in that the Congress (I) was leading in many seats in the State, the whole attitude of government officials, who were working as counting officers, changed and they started rejecting even the ballot papers which had been cast in favour of the petitioner. No particulars of such votes find mention in the petition.

(21) Next, it was said that after four rounds of counting had been completed, the ballot papers of 56 booths had been counted, but according to the official version, votes of 57 booths had been counted. Votes of 43-A is alleged, had never been counted.

(22) The averments regarding counting of 43-A stand controverted in the return filed by the respondent where it has been averred that the petitioner got 52 votes while the respondent secured 58 votes from this booth and these votes were duly credited to their account.

(23) Before proceeding further, a glaring omission in the petition may be noticed here, namely; that it has not been alleged that the result of the election had been materially affected by all or any of the alleged irregularities during counting. Seen in this context, the averments with regard to polling booth 43-A, even to be correct, do not warrant setting aside of the election of the successful candidate.

(24) In a similar vein, are the allegations pertaining to the counting at tables 4, 5 and 6, namely; that the votes of the petitioner were counted amongst those of the respondent and when objection was raised, such votes were declared invalid and the persons raising such objections were threatened that they would be removed from

the counting hall. Here again, no particulars of such votes are forthcoming.

(25) Similar allegations are repeated with regard to the counting at tables 7, 8, 9, 10, 11, 12, 13 and 14 and they too suffer from the same infirmities.

(26) Finally, there is the allegation that postal ballots were counted twice in favour of the returned candidate. This averment too is lacking in material particulars, as neither the number of such votes, as are said to have been counted twice are given nor any particulars of such ballot papers.

(27) It will be seen therefore, that what stands out so prominently on a reading of the petition, are the vague and general allegations made of votes cast in favour of the petitioner, first being included in the votes of the returned candidate and when objection is raised thereto, such votes being declared invalid. Admittedly, no record or notes of any such rejected votes was ever kept. The plea that the candidates and their agents were denied permission to have with them writing material is too far fetched to stand the test of credibility, particularly in the context of the applications annexures P/2 and P/3, which were admittedly made to the Returning Officer during counting. The petitioner has not adverted to any material on record to corroborate this averment. Further and more important is the complete absence of any averment of any wrong-doing at the stage of scrutiny of disputed ballot papers by the Returning Officer at the time when he was required to decide whether or not the ballot paper was valid or deserved to be rejected. There is no mention of any denial of opportunity to the candidates or their agents to examine the votes at least at that stage. Over and above all this, as mentioned earlier, there is no averment to the effect that the result of the election had been materially affected by the alleged irregularities adverted to in the petition.

(28) Lack of material facts and particulars to justify an order for recount thus stands writ large and this being so, there can be no escape from the conclusion that the petition discloses no cause of action, and is consequently hereby dismissed with Rs. 2,000 as costs.